

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re
VIRGINIA PON, et al.,
Alleged Debtors.

Involuntary Case No. 91-3-4765-LK/MM

GOLDEN DIAMOND INVESTMENTS, a
California limited, partnership,
Alleged Debtor,

Involuntary Case No. 91-3-4979-LK/MM

VIRGINIA QUAN, individually and aka V-2
Investments,
Alleged Debtor.

Involuntary Case No. 91-3-5114-LK/MM

MEMORANDUM OPINION

INTRODUCTION

This matter is before the Court on the Motion for Determination of Right to Jury Trial Pursuant to Local Rule 700-7 filed by South City Lumber & Supply Co. and Abitsch Ironworks.

FACTS

The movants and the other petitioning creditors filed an involuntary petition against Virginia Pon on November 20, 1991. The Bankruptcy Court dismissed the petition. On January 9, 1992, Pon filed a counterclaim under section 303(i) and a jury demand against the petitioning creditors for allegedly filing the petition in bad faith. In their Answer to Counterclaim and Jury Demand of Debtor,

1 the petitioning creditors alleged that Pon is not entitled to a jury trial because the matter involves
2 solely issues of law. The jury demand has not been formally withdrawn, and counsel for all parties
3 have been proceeding under the assumption that this would not be a jury trial.

4 DISCUSSION

5 Congress granted the resolution of claims involving the dismissal of an involuntary petition to
6 the jurisdiction bankruptcy courts under 28 U.S.C. § 1411(b) and 11 U.S.C. § 303(i). Therefore, the
7 third prong of Granfinanciera is not satisfied, and defendants are not entitled to a jury trial. The
8 bankruptcy treatises Norton Bankr. Law Practice § 16.07 and Collier § 3.01[7](b)(iii) support this
9 determination.

10 Further, FRCP 16(e) and LR 235-8 provide that a pre-trial order shall control the subsequent
11 course of the action unless modified by subsequent order issued only for the purpose of preventing
12 manifest injustice. The Court's pre-trial order of October 1, 1992 does not contemplate a jury trial.